

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 75 of 1987

TO

FIRST APPEAL No 85 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA and

MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ISUF ISMAIL MANSURI  
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Appearance:

MR HARDIK C RAWAL for Petitioner  
SERVED BY AFFIX.(N) for Respondent No. 1  
RULE SERVED for Respondent No. 2, 4, 5, 6, 7, 8  
MR DARSHAN M PARIKH for Respondent No. 3  
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CORAM : MR.JUSTICE D.C.SRIVASTAVA and

Date of decision: 08/02/2000

ORAL JUDGEMENT

These 11 appeals arising out of the same accident involving common questions of law and facts are proposed to be disposed of by a common judgement.

2. On 17.5.82, there was a head-on collision between the appellant's Bus No. GRR 8270 and Mini Truck cum Tempo No.GRQ 5622 near Bakrol Alindra Patiya on Halol Kalol Road. It is in the evidence that there were 95 passengers in the ST Bus and 16 passengers in the mini truck who were having two monds of timber leaves each. On account of head-on collision, the Driver of the ST Bus died on the spot. One passenger also died on the spot. In all 3 persons died on the spot and 28 sustained injuries. 31 claim petitions were filed on behalf of the inured and legal representatives of the deceased. It was alleged that the Driver of the ST Bus was driving it rashly and negligently and after the head-on collision he could not control the bus and the bus went towards the left side and ultimately fell in a ditch on account of which 2 passengers and the driver died on the spot. The averment was that the bus was driven rashly and negligently at excessive speed and because of large number of passengers, the driver could not control the vehicle after collision as a result of which it had fallen in the ditch. It was also averred that the driver of the mini truck was not at all negligent and he was driving the truck carefully, cautiously at moderate speed.

3. The Tribunal examined the entire evidence adduced by the parties. Few passengers were examined who were travelling in the bus and also few passengers who were travelling in the mini bus cum tempo and after giving thoughtful consideration to the evidence of the eye witness and also the circumstances of the case, the Tribunal found that it was a case where both the drivers were negligent and it was not a case where absolute liability for the accident can be fastened either to the driver of the bus or to the driver of the mini truck cum tempo.

4. After giving these findings, the Tribunal proceeded to assess the contributory negligence and keeping in view the evidence, the condition of the driver, number of passengers in the bus and also number of passengers and load of goods in the mini truck cum tempo found that the driver of the ST bus could be held

responsible to the extent of 70% and the driver of the Mini truck cum tempo can be held responsible to the extent of 30%. Accordingly, compensation was awarded on various heads.

5. 11 appeals pending before us only were filed by the appellant.. No appeal was filed against the remaining 20 claim petitioners awarding various sums to the injured.

6. We have heard Shri H.C.Raval, Ld. Counsel for the appellant and Shri D.M.Parikh, Ld. Counsel for respondent no.3 - Insurance Company. None appeared on behalf of the respondent no.1,2 & 4 to 8 despite service of notice of this appeal. We have also examined the judgement of the Tribunal. Issue No.1 in all the claim petitions was common. The findings of the Tribunal on issue no.1 are that three persons died and the rest sustained injuries on account of composite negligence on the part of the truck driver and bus driver. This finding is based upon proper appreciation of oral evidence of witnesses examined by the parties. Normally, the Appellate Court would not interfere with the assessment of evidence by the Trial Court if it finds that the assessment proceeded on correct lies and is not a result of inference on surmises and conjectures. The site of the accident was also taken into consideration by the Tribunal. The Tribunal has also considered the Panchanama and the FIR lodged in the criminal case arising out of this accident. Both vehicles were coming from the opposite direction. The width of the road at the scene of the accident was 20 feet. There was thus sufficient space for both the vehicles to cross through the road. There was no evidence that there was any obstruction from any intervening vehicle at the time of accident. Consequently the eye witnesses who stated that both the vehicles were drawn rashly and negligently cannot be disbelieved.

7. Dahyabhai Govindbhai was passenger alongwith his two monds of timber leaves in the mini truck cum tempo. From his statement it transpires that the ST bus was coming with excessive speed and was driven rashly and negligently and had dashed and collided with the left side of the tempo. The ST Bus went ahead, crossed the road, went off the road and fell in a pit on the left side of the road at Halol. He is the injured witness and therefore his presence on the tempo cannot be doubted. The manner in which he has given the statement and the eye witness on account of the accident leaves little room for the Learned Counsel for the Insurance Company to

argue that the tempo was on the wrong side and that it collided with the bus and the bus went towards the right side. The statement of this witness clearly states that the tempo and bus did not collide 100% headon but it was side collision from the right side of the bus and left side of the tempo. This witness has further stated that the driver of the ST bus was rash and negligent in driving the vehicle. He denied that the ST bus was driven with moderate speed. Bhikhabhai Maganbhai was another passenger in the mini truck. According to him, there were 14 passengers with 2 to 3 monds of timber leaves. He has stated that the tempo was driven slowly whereas the ST Bus coming from the opposite direction was on the wrong side and was driven rashly and negligently and collided with the tempo. Since he was sitting over the bundle of timber leaves he had time and opportunity to see the accident. He denied that the tempo or mini truck was being driven with excessive speed.

8. Nyalchand Nathalal Shah who was a passenger in the ST bus stated that the ST bus was driven rashly and negligently and dashed with speed. It is not clear from the judgement whether this witness was examined by the ST Corporation and if so whether he was declared hostile. However, the judgement shows that he was cross examined on behalf of the ST Corporation. However, if he was hostile witness his entire testimony could not be rejected. The principles for appreciation of statement of hostile witness are that the portion of statement of such hostile witness which inspires confidence can be safely accepted and relied upon. In the cross examination he stated that the passengers in the bus were shouting before the driver to drive the bus at slow speed. Consequently the statement of this witness also indicates that greater negligence was of the ST Bus driver.

9. Usmansha Bafatisha was the cleaner in the mini truck cum tempo. This witness also deposed that the ST bus was driven with full speed and it dashed against the tempo cum matador. Being the cleaner of the tempo, this witness had also time and opportunity to see in what manner the accident took place. He saw the ST bus coming from the opposite direction from a distance of 50 feet and as such his statement about the manner of accident cannot be disbelieved. Mansinghbhai Khamjibhai is another passenger who was travelling in the ST Bus who too has stated in the cross examination that the ST bus was driven on the middle of the road with excessive speed. If this is so then from his statement also it can be said that the ST driver was not driving the vehicle on

the left side but he was driving it in the middle of the road which was 20 feet wide. One affidavit was also relied upon by the Tribunal but we are unable to rely upon this affidavit because we do not find any direction from the Tribunal that the case may be decided on affidavit nor it is indicated in the judgement that the person filing the affidavit was cross examined by the other side.

10. From the aforesaid oral evidence, the Tribunal came to the right conclusion that it was a case of composite negligence of the two drivers i.e. the driver of the bus and the driver of the mini truck. If it was a case of contributory negligence of both the drivers.

11. The next question for determination is what should be the extent of liability to pay compensation in such circumstances.

12. The Tribunal has held 70% liability on account of negligence of ST Bus driver and 30% on account of negligence of mini truck cum tempo. The Learned Counsel for the respondent no.3 argued that this assessment of the Tribunal is also reasonable and does not require any interference. As against this Shri Raval, Ld. Counsel for the appellant contended that since it was head on collision both the drivers could have avoided the accident if little precaution would have been taken by them and since it was head on collision liability should be 50% for the negligence of the ST driver and 50% for the negligence of the matador driver. We are however unable to agree with the contention of Shri Raval on this point. The reason is that it has come in the statement of the legal representatives of the deceased driver that the deceased driver was overworked on the previous day and worked till 4:00 a.m. in the morning. It is also evidence that there were 95 passengers in the bus which was driven by the driver. Normally if the driver was overworked then he should have requested the ST Corporation Authorities to provide for a substitute as he required rest but there is nothing on record that he made oral or written request to the authorities of the ST Corporation to provide for substitute or for making alternative arrangement. Even if this was not done by the driver, he should have insisted that only permissible limit of passengers should be taken in the bus. By no stretch of imagination it can be said that 95 passengers were permissible number of passengers to be carried in the bus. If he did not insist that only permissible passengers be taken in the bus it is also a factor which constitutes towards negligence on the part of the driver.

He did not behave as a reasonable and prudent man on the facts and circumstances of the case in not insisting for substitute and alternative arrangement and also did not insist to carry only permissible number of passengers in the bus. If the bus was overloaded and the driver was completely tired, it can be said that he could not have effectively controlled the bus even after slight impact of collision with the other vehicle coming from the opposite side. Ofcourse severe damage was caused to the ST bus and the damages were shown to the tune of Rs.750000/- but that is not a ground for believing that the driver of the mini truck was more negligent. It is evident that after collision the bus was taken by the driver towards the left side and because he could not control the bus it ultimately fell down in the pit. It is on account of the fall in the pit that serious damage was caused to the bus and number of passengers travelling in the bus sustained injuries and two of them died. If the mini truck also carried about 15 passengers; 2 in the driver's cabin and 12 in the body and some of the passengers were having between two to three mounds of timber leaves, it cannot be said that the mini truck was overloaded to the same extent with which the bus was overloaded. Moreover, there is no evidence on record that the mini truck also turned turtle and that it sustained serious damage. This is yet another factor to infer and conclude that the driver of the mini truck was not so negligent in handling the truck as the driver of the ST bus.

13. However, considering the facts and the circumstances of the case and the manner of the accident, we are inclined to interfere with the percentage of negligence assigned to the two drivers by the Tribunal. In our opinion, interest of justice would be met if 70% negligence of the ST bus driver is reduced to 60% while 30% negligence of the mini truck driver assessed by the Tribunal is enhanced to 40%.

14. Accordingly, the aforesaid 11 appeals succeed in part only and are partly allowed. The award of the Tribunal assessing 70% liability of the ST Bus driver is modified and reduced to 60% and the liability of the driver of the mini truck cum tempo is enhanced to 40% from 30%. The compensation shall be accordingly recalculated and shall be paid to the claimants. In the facts and circumstances of the case, the appellants and the respondent no.3 shall bear their own costs in these appeals.

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